

# COUNTY OF YORK

## MEMORANDUM

**DATE:** July 16, 2003 (BOS Mtg. 8/19/03)

**TO:** York County Board of Supervisors

**FROM:** James E. Barnett, County Attorney

**SUBJECT:** Amendment of County code § 2-4—Requirement for certain successful job applicants to pay the cost of a criminal records check

Just this last June 17th, based upon HB 2373 adopted by the General Assembly (now codified as new Virginia code § 15.2-1503.1, I recommended certain changes to County code § 2-4. Among those changes was a requirement that any job applicant for a position which had been designated by the County Administrator as one for which a criminal history records check was required, would be required to pay the cost of the records check and the cost of the associated fingerprinting. Subsequent to the adoption of that amendment, I discovered that the 2003 General Assembly also adopted HB 2031, now codified as Code of Virginia § 15.2-1505.1. Both new statutes deal with local ordinances adopted pursuant to Code of Virginia § 19.2-389 by which a locality may designate certain positions as requiring criminal records background checks. Both new statutes contain much of the same language, both requiring the applicant for a designated position to submit to fingerprinting and provide "personal descriptive information" to be forwarded along with the fingerprints to the FBI. However, while new code § 15.2-1503.1 states quite clearly that "such applicant or licensee shall pay the cost of the fingerprinting or a criminal records check or both," § 15.2-1505.1 states that "such applicant shall, *if required by ordinance*, pay the cost of the fingerprinting or a criminal records check or both." (Emphasis supplied.)

Because the issue of requiring a successful job applicant to pay for his own background check was a matter of some concern both to members of the Board and the County Administrator, particularly in light of the fact that many of the designated positions provide relatively low compensation, I have now proposed a further modification of County code § 2-4 to delete the requirement that the applicant pay for the fingerprinting and the background check. It is curious that the General Assembly saw fit to adopt two new statutes, each dealing with precisely the same subject matter and yet contradicting one another on this specific point. I know of no particular way to resolve the discrepancy as a matter of sound statutory interpretation. One hesitates to suggest that the General Assembly, in its haste to adopt legislation, failed to notice that it was contradicting itself. Perhaps the two bills merely crossed one another, as HB 2373, with seven patrons in the House of Delegates and two in the Senate, was referred to the Committee on Counties, Cities and Town, while HB 2031, patroned by Delegate Peterson and Senator Byrne, was referred to the Committee on Militia, Police and Public Safety. I can only guess that no

one bothered to compare the two bills closely prior to the time that they reached the House floor for adoption. Still, one might have thought that the Senate Committee on Local Government, to which both bills were referred, would have noticed something odd about these two pieces of legislation. In any event, rather than try to parse out whether either of these new statutes takes precedence over the other, I suspect we would be fairly safe in picking the one that we prefer, which I have presumed would be the statute which allows us to determine by ordinance whether a job applicant will be compelled to pay for his or her own background check. I have recommended to the Virginia Association of Counties that they ask the General Assembly to clarify what they meant when they adopted both statutes simultaneously.

I recommend the adoption of Ordinance No. 03-30.

Barnett/3440:swb

Attachment

- Ordinance No. 03-30